

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

In the Matter of)	
)	
Application by New York Telephone Company (d/b/a Bell Atlantic - New York), Bell Atlantic Communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc., for Authorization To Provide In-Region, InterLATA Services in New York)	CC Docket No. 99-295

Application by Bell Atlantic - New York
For Authorization to Provide In-Region InterLATA Services
In New York

REPLY COMMENTS OF THE COMPETITION POLICY INSTITUTE

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SUMMARY OF REPLY COMMENTS

In these reply comments, the Competition Policy Institute shows that the record in this proceeding requires the Commission to deny Bell Atlantic's section 271 application at this time.

In our initial comments, we presented evidence, including data from Bell Atlantic's application and the results of our survey of New York consumers, that nearly all New York residential consumers in the Bell Atlantic territory lack the ability to choose a local exchange carrier other than Bell Atlantic. The comments of other parties provide insight into the reasons why there is so little residential local phone competition in New York and support our conclusion that the public interest will not be served by Bell Atlantic's long distance entry until consumers have a competitive choice for local service.

New York residents do not enjoy the benefits of local competition in part because Bell Atlantic has not fully implemented the competitive checklist in section 271(c)(2)(B) of the 1996 Act. Bell Atlantic's under-performance in several key areas makes it very difficult for CLECs to process service orders that require the use of unbundled network elements (UNEs). The most serious remaining problems include coordinating loop cutovers, implementing electronic order and confirmation processes and providing DSL-ready loops. From our review of the record, we believe the cumulative effect of Bell Atlantic's substandard performance in these areas makes it difficult for CLECs to develop and execute mass market strategies in the residential sector.

Because New York consumers do not have a competitive choice for local service, the Commission should deny Bell Atlantic's application on the basis that it is not "consistent with the

public interest, convenience and necessity.” We also agree with other parties who conclude that the performance plans proposed by Bell Atlantic, and adopted by the New York Public Service Commission (“NYPSC”), do not sufficiently guarantee that Bell Atlantic will continue to cooperate with new entrants once it enters the long distance market. Tough “anti-backsliding” measures are essential to the Commission’s success in implementing section 271 in a manner that benefits consumers.

Finally, CPI urges the Commission to decline to give Bell Atlantic any answer other than “No, not at this time.” The commission should not, for example, give Bell Atlantic approval to enter the long distance market conditioned on future performance. An answer other than “Yes” or “No” would be contrary to the plain language of the Communications Act, would create an undesirable precedent, would invite legal appeals and would ultimately be an ineffective use of the Commission’s resources.

REPLY COMMENTS OF THE COMPETITION POLICY INSTITUTE

I. INTRODUCTION

The Competition Policy Institute (CPI)¹, files these reply comments in accordance with the Federal Communications Commission's Public Notice issued on September 29, 1999² on the application of New York Telephone Company, d/b/a Bell Atlantic-New York et. al. (Bell Atlantic).³

In our initial comments, we focused on the Commission's prerogative and duty to conduct a broad and flexible evaluation of whether Bell Atlantic's application is consistent with the "public interest, convenience and necessity."⁴ As we stressed in those comments, the opening of *local exchange markets* was the central goal of Congress when it adopted the 1996 Act. The Commission recognized the importance of that goal in its *Ameritech Michigan Order* when it stated that section 271 reflects the judgment of Congress that "local telecommunications markets must first be open to competition so that a BOC cannot use control of bottleneck local exchange

¹ CPI is an independent, non-profit organization that advocates state and federal policies to promote competition in telecommunications and energy services in ways that benefit consumers. Complete information about CPI can be obtained from our web site at <www.cpi.org>.

² Comments Requested on Application by Bell Atlantic for Authorization Under Section 271 of the Communications Act to Provide In-region, InterLATA Service in the State of New York, DA 99-2014, Public Notice (Sept. 29, 1999).

³ *Application by New York Telephone Company (d/b/a Bell Atlantic-New York), Bell Atlantic communications, Inc., NYNEX Long Distance Company, and Bell Atlantic Global Networks, Inc., for Authorization to Provide In-Region, InterLATA Services in New York*, CC Docket No. 99-295 (Sept. 29, 1999) (Bell Atlantic Application)

⁴ 47 U.S.C. § 271(d)(3)(C).

facilities to undermine competition in the long distance market.”⁵ Some commenters in this proceeding, nonetheless, mistakenly continue to focus the public interest inquiry solely on the question of the benefits that may derive from Bell Atlantic’s entry into long distance markets.⁶ CPI urges the Commission to adhere steadfastly to its commitment to examine the state of local competition in New York when evaluating whether Bell Atlantic’s application serves the public interest.

There are four primary reasons why the Commission should examine whether New York consumers have a realistic choice of local telephone service as an integral part of its public interest inquiry.

First, if consumers have choice of a local service provider, this provides evidence that section 271 (and the competitive checklist in particular) is really working. Second, if consumers have a choice for local telephone service, a BOC has less incentive and ability to discriminate against its potential long distance competitors. Third, if consumers have a choice of local service provider, they will have options for "one-stop-shopping;" on the contrary, if a BOC’s long distance entry occurs before consumers have competitive options for local service, consumers will have only a single option for bundled services— the incumbent carrier. Finally, we think it will be more difficult for Bell Atlantic to renege on its obligations under section 271 if CLECs are

⁵ *Ameritech Michigan Order*, par 388.

⁶ *See* Comments of Keep America Connected, p. 3; NCL comments p. 3, (suggesting Bell Atlantic’s entry into long distance will benefit consumers since they “deserve more choices in the long distance marketplace”); NCL comments p. 2-3, (“ the increased long-distance competition in New York will help make the promise of 1996 Telecommunications Act a reality for consumers.”).

actually serving customers in an actual competitive local marketplace.

In our initial comments we applied this standard to Bell Atlantic's application and concluded that New York residential consumers do not have a realistic choice for local telephone service. For that reason, we recommended the Commission deny Bell Atlantic's application. We based our finding on the data Bell Atlantic provided concerning the numbers of access lines CLECs serve in New York and on data we culled from a survey of one thousand New York residential consumers, the vast majority of whom had no choice of local telephone company.⁷

Nothing in the record of this proceeding causes us to waver from our previous conclusion. Indeed, the comments of other parties provide an understanding of why just 3% of New York residents (and only 1.5% outside the New York City metropolitan area) have chosen a CLEC for their local telephone carrier. The comments also help explain why the residential market is still in its infancy and why nearly two-thirds of New Yorkers we surveyed reported either that they have no competitive choice for local exchange service or that they did not know if a competitive carrier served their area.

⁷ See, CPI Comments, Attachment A, *New York Telephone Competition Survey*. In addition to assessing consumer attitudes about local competition, our survey attempted to measure what percentage of residential customers had switched from Bell Atlantic to a competing carrier. In our initial comments, we noted that some customers were misreporting the identity of their local carrier, appearing to confuse their local carrier and long distance carrier. We reported at that time that additional research was ongoing to measure the effects of that confusion. Attachment 1 to these Reply Comments, *New York Telephone Competition Survey — Supplemental Research* contains the results of that additional research. Respondents who reported using a local carrier other than Bell Atlantic were called back and encouraged to check their local phone bill to determine their local carrier. The outcome of this additional research was to significantly lower the estimated CLEC market share from the survey. In addition, the supplemental research confirmed our view that New York residential consumers are not well informed about the status of competition in the local market or about their competitive choices.

The record also supports our conclusion that the Performance Assurance Plan adopted in New York does not adequately guarantee that Bell Atlantic will continue to comply with the market opening measures in section 271 once it obtains in region, interLATA entry. Until Bell Atlantic fully implements the checklist requirements, until New York residential consumers have a realistic choice of local service providers, and until the Commission has sufficient assurances that Bell Atlantic will comply with the checklist after long distance entry is granted, the Commission must deny Bell Atlantic's application.

II. BELL ATLANTIC'S FAILURE TO FULLY IMPLEMENT THE COMPETITIVE CHECKLIST DENIES CONSUMERS COMPETITIVE CHOICE, SO THAT ITS APPLICATION IS NOT CONSISTENT WITH THE PUBLIC INTEREST.

A. Bell Atlantic's Failure to Provide Nondiscriminatory Access to Unbundled Local Loops Diminishes Competitive Choices for Residential Customers.

In its brief accompanying its application, Bell Atlantic blames the CLECs for the lack of residential competition and suggests that its entry into the long distance market in New York would stimulate greater residential competition. Bell Atlantic argues that, if it is allowed to enter the long distance market, its potential competitors will speed up their rollout of local services in order to provide bundled local and long distance packages to consumers.⁸ CPI disagrees fundamentally with this view. No matter how vigorously competitors pursue the market, they are still at Bell Atlantic's mercy for access to bottleneck local exchange facilities. These facilities, particularly unbundled loops, hold the key to competitors' ability to mass market local telephone

⁸ Bell Atlantic brief p. 67.

service in New York.⁹ Only when Bell Atlantic makes these facilities easy to obtain in an efficient and cost effective manner will CLECs be able to move into the residential market in a meaningful way.

Our review of the comments in this proceeding suggests a more plausible explanation than the one Bell Atlantic offers. The comments document the fact that Bell Atlantic's performance in providing unbundled loops to their wholesale CLEC customers is substandard. We agree that "the availability of unbundled elements leased from Bell Atlantic is critical to fostering competition to serve residential customers as well as small and medium sized businesses."¹⁰ Nondiscriminatory access to unbundled loops helps new entrants access customers quickly and efficiently without duplicating the incumbent's existing network. Bell Atlantic's substandard performance imposes costs on the CLECs, reduces their ability to obtain needed facilities and thereby frustrates their ability to construct a residential mass market strategy based on unbundled network elements. We focus our comments on Bell Atlantic's wholesale performance in the following three areas:

- Bell Atlantic's performance of coordinated cutovers of unbundled loops;
- Bell Atlantic's reliance on manual processing for UNE orders; and
- Bell Atlantic's performance in providing DSL-ready loops.

⁹ See DOJ Eval., p. 12.

¹⁰ DOJ Eval. p. 13.

1. Bell Atlantic's Performance in Coordinating Unbundled Loop Cutovers is Inadequate.

Our survey of New York residential consumers showed that, under the right conditions, consumers are willing to switch local telephone companies. Conversely, the survey showed consumers would be much less likely to switch if their service was significantly disrupted: "the strongest impediment to switching comes from concern about service interruptions during change over."¹¹ In addition, residential consumers generally demand high quality service, prompt attention, and accurate performance or they will switch providers.¹²

Consumers in New York will not have a truly competitive choice for local telephone service until they can switch without concern about service interruptions during the change from one local telephone company to another. Currently, Bell Atlantic's performance in implementing the switch to a competitive carrier imposes considerable burdens on CLECs and reduces the quality of service a CLEC can provide its new customers.

In their comments, CLECs showed that Bell Atlantic struggles to provide confirmation or rejection of coordinated loop cutover ("hot cut") orders on time. When those confirmations are returned to the CLECs on time they are often inaccurate.¹³ Once a hot cut is actually scheduled Bell Atlantic is often unable to complete the order on time.¹⁴ In addition, even after Bell Atlantic

¹¹ CPI Comments, Attachment A, *New York Telephone Competition Survey*.

¹² See AT&T comments, p.14.

¹³ See DOJ comments, p. 16; NYPSC Eval. p. 81.

¹⁴ See NYPSC Eval. pp. 85-87.

provisions the unbundled loop to the CLEC correctly, there are occasions where the customer loses their directory listing.¹⁵

Bell Atlantic's performance in this area remains a critical impediment to real competition in the local exchange market. We agree with the DOJ that "reliable performance in completing hot cuts correctly and at the time scheduled is extremely important because of the risk to the customer of losing dialtone for more than a brief period."¹⁶ Obviously, losing a customer's dialtone or a directory listing for a significant period of time is exactly the kind of disruption a customer fears most and is therefore likely to discourage a customer from switching from Bell Atlantic to a CLEC.

There is ample evidence in this proceeding for the Commission to conclude that some CLEC customers suffer unreasonable disruptions in their service during the hot cut process. In the Meek Affidavit, for example, AT&T compiles a list of hot cut orders that, due to Bell Atlantic errors, resulted in service outages to AT&T customers.¹⁷ In the week of August 2 to August 6, to cite one example, 13 out of 16 total orders resulting in service disruptions had outages lasting greater than 24 hours.¹⁸ Importantly, the NYPSC has determined the maximum acceptable disruption should be only five minutes.¹⁹

¹⁵ See Choice One comments, pp.7-8.

¹⁶ Se DOJ comments p.18.

¹⁷ See AT&T Meek aff. Attachment 1.

¹⁸ AT&T Meek aff. Attachment 1, p. 1-2.

¹⁹ See Bell Atlantic brief, p. 19; ALTS comments, p. 26.

Obviously, the problems experienced by CLECs in obtaining unbundled loops delay and frustrate their ability to serve their customers. But these problems also unfairly damage the CLECs' reputation in the marketplace, since customers blame the CLECs for service problems caused by Bell Atlantic. It is hardly surprising that a CLEC would balk at entering a mass market when its reputation is put at stake by its wholesale supplier.

2. Bell Atlantic Does Not Provide Nondiscriminatory Access to its OSS with the Result That CLECs Cannot Obtain Loops in an Efficient Manner.

The Commission's several orders in the section 271 cases to date establish a standard that requires BOCs to offer CLECs parity in accessing the BOCs' OSS. In the *BellSouth Louisiana Order*, the Commission explained that this parity was crucial so the BOCs' competitors would

be able to provide service to their customers at a quality level that matches the service provided by the incumbent LEC to compete effectively in the local exchange market. For instance, if new entrants are unable to process orders as quickly and accurately as the incumbent LEC, they may have difficulty marketing their services to end users.²⁰

The record in this proceeding shows that the Commission is correct to be concerned about the outcome when CLECs do not have nondiscriminatory access to the ILECs' OSS. Bell Atlantic still relies heavily on a manual system for providing information, taking orders, confirming orders, and processing orders for CLECs. Such reliance on manual processing inherently discriminates against CLECs: while Bell Atlantic manually enters its own orders into

²⁰ *BellSouth Louisiana Order*, par. 83.

the system, it does so only once. CLEC orders, however, are entered using a manual process when the CLEC receives an order from the customer, and then a second time when a Bell Atlantic employee re-enters the CLEC order into Bell Atlantic's system.²¹

Bell Atlantic's reliance on manual processes inevitably degrades service quality and raises the cost to the CLEC of providing service. This, in turn, lessens a CLEC's ability to use a broad UNE-based strategy. As the DOJ explained in its comments:

Profit margins for serving the average residential customer are relatively modest; if CLECs are required to devote substantial resources to manual processing of orders, the costs of doing so may have a serious impact on those margins. In addition, heavy reliance on manual processes inevitably generates mistakes and delays in processing orders, which may seriously affect service quality. Customers may be wary of switching to CLECs if there is considerable uncertainty about the quality of service they offer."²²

It is, of course, small comfort to the CLEC that the reason they can't offer service comparable to the incumbent is not of their own making. Bell Atlantic's substandard performance "perpetuates the misperception that changing to CLEC service results in service quality less than Bell Atlantic, even though Bell Atlantic is the source of the problem."²³ In addition, Bell Atlantic has a conflicted incentive; if the problem is not fixed, Bell Atlantic benefits retains the customer who believes that the CLEC is unreliable.

²¹ See Covad comments, pp.29-30.

²² See DOJ Eval., p. .29.

²³ Choice One comments p. 8.

3. Bell Atlantic's Performance in Provisioning DSL-Ready Loops Frustrates CLECs' Ability to Use a DSL-Based Local Market Entry Strategy.

Respondents to CPI's survey of New York consumers indicated that one reason they would be likely to switch local telephone carriers would be if a range of telecommunications services were available from a single provider.²⁴ One service that many carriers are offering or planning to offer in conjunction with local service is Digital Subscriber Line (DSL) service. There is wide belief that broadband services will be a significant component in many carrier's service offerings as they entice consumers to switch.²⁵ Sprint, for instance, bases its local entry strategy largely on its Integrated On-demand Network ("ION").²⁶ According to Sprint, ION will be a broadband service that enables customers to transmit voice, facsimiles, data, video and high speed internet access simultaneously over a single loop.²⁷ In its comments, Sprint explains that, in order to deploy ION, it requires nondiscriminatory access to unbundled loops from Bell Atlantic.

Other CLECs may use DSL service as a means to distinguish their service from Bell Atlantic's. For example, some CLECs wish to distinguish their product offerings by providing DSL services over loops on which Bell Atlantic does not now offer its retail DSL product, InfospeedTM²⁸. In practice, however, it is costly and cumbersome for CLECs to offer DSL in

²⁴ CPI Comments, Attachment A, *New York Telephone Competition Survey*.

²⁵ See DOJ Eval. p.23, FCC, *Broadband Today*, Cable Bureau Staff Report, at 32 (Oct. 1999).

²⁶ See Sprint Comments, p. 3.

²⁷ See Sprint Comments, p. 3.; Sprint Smith aff., par. 3.

²⁸ See Rythms comments, p. 21.

areas where Bell Atlantic does not or will not offer Infospeed™.

CLECs seeking to offer xDSL services in New York do not have access to the unbundled loops from Bell Atlantic needed to effectively deploy broadband services. For example, CLECs make the point that Bell Atlantic's loop qualification database does not contain crucial preordering information needed to determine whether they can serve a particular customer.²⁹ When CLECs cannot quickly and accurately advise a potential customer whether or when service is available, that potential customer is not likely to become an actual customer.³⁰ Moreover, many CLECs offer various differing xDSL technologies, requiring them to know the length of the loop and whether the loop contains certain electronics in order to deploy a suitable form of DSL.³¹

Because Bell Atlantic designed its loop qualification database to serve the needs of its retail ADSL offering, the database does not provide the information needed by CLECs.³² The result is that, instead of the CLEC determining whether it can provide DSL service, Bell Atlantic makes that determination for the CLEC. By limiting the loop data it provides to CLECs, Bell Atlantic effectively limits the loops over which CLECs may provide xDSL service to those loops that Bell Atlantic's database qualifies for ADSL.³³ Furthermore, by limiting CLECs' xDSL offerings to loops on which Bell Atlantic could offer its Infospeed™ service, Bell Atlantic

²⁹ See Northpoint Comments p. 18.

³⁰ See Rhythms Aff. of Geis/Williams par. 38-39.

³¹ See Rhythms Aff. Geis/Williams par 20, par 24-25.

³² See Sprint Comments p. 11; Sprint Smith affidavit par. 18.

³³ Rhythms aff. of Geis/Williams, par. 27.

effectively forecloses the possibility that a CLEC could entice a consumer to switch by offering local telephone service bundled with DSL service deployed using technology more suitable for the customer's loop.

B. The Performance Assurance Plan Approved By the NYPSC Is Insufficient to Guarantee Bell Atlantic's Future Compliance with Section 271 After it Obtains Long Distance Authority.

Bell Atlantic has agreed to subject itself to a Performance Assurance Plan and Change Control Assurance Plan that monitors and enforces compliance with the market-opening requirements of section 271 after the company is authorized to provide in-region interLATA service. In our initial comments, we expressed doubts about the efficacy of these plans and recommended that the Commission require that they be strengthened before approving Bell Atlantic's application. None of the comments in this case offered any facts that would lead us to a different conclusion. Indeed, the comments provide further support that the performance plan does not provide Bell Atlantic with adequate incentives to complete its market-opening efforts or ensure that the markets remain open after the powerful incentive of section 271 relief is removed.

As a preliminary matter, since the NYPSC did not approve the performance plan before Bell Atlantic filed its application, the Commission rightfully should not consider the plan as part of its judgment whether it can "rely on the petitioning BOC to continue to comply with the requirements of section 271 after receiving authority to enter the long distance market."³⁴

If, however, the Commission does consider the performance plan, it must recognize that

³⁴ *Ameritech Michigan Order*, par. 399.

there are loopholes in the performance measures that would allow compliance with section 271 to degrade even under the radar of the NYPSC. One large gap is found in the performance metric for loop cutovers. Unfortunately for New York consumers, this performance metric does not capture the actual effect that Bell Atlantic's inadequate performance would have on the end user customer. Specifically, the metric is inadvertently misleading because it does not reflect service outages that can be caused by Bell Atlantic's performance.³⁵ For instance, Bell Atlantic can label early hot cuts as timely under the performance measure, even if a premature cut disrupts the customer's service.³⁶ Further, if Bell Atlantic performs an early cutover that results in a service outage and the CLEC customer cancels the order, Bell Atlantic does not count that event in its metric. As Choice One suggests, this "distorts the picture of Bell Atlantic's performance because unless the loop cutover is coordinated with the porting of the number, CLEC customers are left without telephone service."³⁷ As a result of CLEC concerns, the NYPSC states that it will "consider several adjustments to the measurement process."³⁸ Until such measurements are in place, though, the Commission cannot conclude that the metrics are clear enough to measure whether Bell Atlantic is meeting its obligation to provide non-discriminatory access to unbundled loops.

³⁵ See AT&T comments, p. 37-38;

³⁶ See Choice One comments, p. 5.

³⁷ Choice One Comments, p. 5.

³⁸ NYPSC Eval. p. 90.

Next, the performance plan offers substantial opportunities for Bell Atlantic to seek penalty waivers.³⁹ According to the Attorney General of New York, these waiver provisions are broad and vague and they invite lengthy proceedings before the NYPSC and litigation in the courts.⁴⁰ The waiver process Bell Atlantic proposes creates ample opportunity for “delay in imposing penalties and uncertainty that inadequate performance will be in fact punished.”⁴¹ The Commission was clear when it expressed its preference that “performance monitoring includes appropriate, self-executing enforcement mechanisms.”⁴² Based on the comments in this proceeding, it appears that the performance plan does not contain the self-executing enforcement mechanisms the Commission is looking for.

III. THE COMMISSION SHOULD DENY BELL ATLANTIC’S APPLICATION OUTRIGHT AND NOT CONSIDER CONDITIONAL ENTRY.

CPI agrees with the DOJ’s observation that the section 271 approval remains the most powerful incentive to ensure that Bell Atlantic takes the last steps necessary to open its market to competition.⁴³ We also agree with the DOJ’s contention that the Commission should not rely on Bell Atlantic’s promises of post-271 entry performance in deciding whether to grant this

³⁹ See NYAG Comments p. 33; DOJ Eval. p. 39.

⁴⁰ See NYAG comments p. 34; *See also* DOJ Eval., p. 39.

⁴¹ DOJ Eval., p. 39.

⁴² *Ameritech Michigan Order*, par. 394.

⁴³ DOJ Eval., p. 37.

application.⁴⁴

At the end of its evaluation, the DOJ suggests that the Commission could consider granting the application subject to carefully crafted conditions.⁴⁵ While the DOJ offers no view on whether the Commission possesses the legal authority to take that action, the Department outlines concerns and possible infirmities in proceeding along that course. We have no doubt that “conditional approval” is an inadvisable course for the Commission to take.

A. The Telecommunications Act of 1996 Does Not Authorize Conditional Entry.

When Congress assigned the Commission the duty to review BOC applications to enter in-region, interLATA markets, it did not supply the Commission with authority to approve that entry conditionally. Section 271(d)(3) requires that the Commission “shall issue a written determination approving or denying the authorization requested”.⁴⁶ A reasonable reading of the plain language in this section leads us to conclude that the Commission must say either “yes” or “no” to a section 271 application. We fail to see how this statutory requirement can be read to say otherwise.

Section 271(d)(4) provides another oft-cited limit on what the Commission may consider when examining a BOC’s application for in region, interLATA entry. This section provides that the Commission cannot “by rule or otherwise limit or extend the terms of the competitive

⁴⁴ See DOJ Eval., p. 37.

⁴⁵ See DOJ Eval., p. 42.

⁴⁶ 47 U.S.C. § 271 (d)(3).

checklist”.⁴⁷ If the Commission grants an application conditionally, especially if the Commission finds that some items of the checklist have not yet been fully implemented, it would be limiting the checklist with respect to those items, an apparent violation of section 271(d)(4).⁴⁸

B. “Conditional Approval” Would Not Constitute Sound Public Policy

We think that conditional approval of this application will invite lengthy litigation, set an undesirable precedent for future section 271 applications and would be an inefficient use of the Commission’s resources.

First, if the Commission takes the route of conditionally approving Bell Atlantic’s application, it will doom this application to a contentious and potentially lengthy legal battle over the process used. This prospect offers no benefits to New York consumers. While litigation grinds on, there will be confusion in the New York telecommunications market and consumers may well be denied both the benefits of a choice for local service and the benefits that will follow from Bell Atlantic’s long distance entry. Instead, New York consumers need for Bell Atlantic to finish the work it started and fully open its local market to competitors, not to have Bell Atlantic and its competitors slugging it out in court over the scope of the Commission’s section 271 authority.

Second, CPI thinks that granting BA’s section 271 application with conditions sets an

⁴⁷ 47 U.S.C. § 271 (d)(4).

⁴⁸ The Commission asserted in the *Ameritech Michigan Order*, relying on 47 U.S.C. 271(d)(6), that it has the authority to attach "conditions on our grant of in-region, interLATA authority." *Ameritech Michigan Order*, at par. 401. CPI believes the Commission was not referring to a case where the BOC had not completely demonstrated checklist compliance.

undesirable precedent. A conditional approval would undoubtedly encourage other applications where the applicant has satisfied fewer checklist items than Bell Atlantic. In such applications, the Commission will have a progressively more difficult time drawing the line and deciding how close an application must be to warrant conditional approval. Congress may have anticipated that problem by requiring that the applicant fully meet all fourteen points of the competitive checklist and the public interest test before obtaining section 271 authority. We think the Commission is well-advised to rely on a strict, but obvious, interpretation of this provision.

Third, the terms of conditional approval will surely vary by the state and the applicant, leaving the Commission with the potentially immense task of determining which conditions must be tailored for each application and of tracking their satisfaction. Given the limited amount of time the statute affords the Commission to act on an application, it makes little sense to stretch the Commission's resources even further.

IV. CONCLUSION

The Communications Act requires that Bell Atlantic fully comply with the competitive checklist before it receives approval to enter the interLATA market in New York. Once the checklist is met, the Commission can permit Bell Atlantic to enter the interLATA market only when doing so is consistent with the public interest. Since Bell Atlantic has not fully complied with the checklist and since consumers do not have such a realistic choice for local service at this time, the application should be denied. The Commission should not entertain proposals to grant Bell Atlantic interLATA entry conditionally since such action is contrary to the plain language of the statute and sound public policy.

Respectfully submitted,

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Certificate of Service

I, Kenneth R. Laureys, hereby certify that on this eighth day of November, 1999, copies of the foregoing Reply Comments of the Competition Policy Institute were served by electronic filing or by first-class, United States mail, postage prepaid, upon each of the parties listed below.

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**Attachment 1 to the Reply Comments
of the Competition Policy Institute**